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Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

OCTOBER TERM, 1995

GLENN DOUGLAS KNIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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35 pp

QUESTION PRESENTED FOR REVIEW

Whether the administrative forfeiture of unclaimed property can constitute "punishment" for purposes of the Double Jeopardy Clause?

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PETITION FOR WRIT OF CERTIORARI
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PETITION FOR WRIT OF CERTIORARI

Glenn Douglas Knight (hereinafter "petitioner"), by and through his attorney, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THIS CASE BY COURTS

The memorandum of the Court of Appeals (App. A1-A2) is not reported. The order of the

District Court (App. A3-A13) is not reported.

STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

The judgment or order sought to be reviewed (App. A1-A2) was entered September 29, 1995. The date of the order denying petitioner's petition for rehearing (App. A14-A15) was April 5, 1996. The statutory provision believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari is 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED IN THIS CASE

The Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States provides: "No person shall ... be subject for the same offence to be twice put in jeopardy of life or limb."

The text of 19 U.S.C. § 1609 is set out at A16-A17.

STATEMENT OF THE CASE

On April 8, 1991, Oregon authorities discovered methamphetamine laboratory equipment in petitioner's car trunk. Petitioner was arrested but later released on April 9, 1991. Officers executed a search warrant for evidence of methamphetamine manufacturing

at petitioner's house. There, agents seized $12,256 in currency on petitioner's person. App. A4.

The currency was seized for forfeiture under 21 U.S.C. § 881. Pursuant to 19 U.S.C. §§ 1602-1619, procedures to administratively forfeit the property were started. On May 28, 1991, two notices of seizure were sent to petitioner's residence. Under the administrative forfeiture procedure, petitioner could petition the government for the return of the property or his interest in it. In addition or in lieu of petitioning for remission or mitigation, petitioner could also contest the forfeiture of the property in court. App. A4.

Petitioner did not contest the forfeiture: He neither submitted a timely petition for remission or mitigation nor did he file a claim of ownership, cost bond or declaration with the government. Accordingly, the forfeiture was completed and recorded as uncontested. App. A5.

In June 1994, pursuant to petitioner's arrest in this case, agents seized $20,644 in currency and $9,500 in travelers checks. On August 1, 1994, notices of seizures were sent to petitioner and two other persons. As with the 1991 seizure, these notices set forth the procedures for administrative remission and mitigation, as well as procedures for filing a cost bond and contesting the forfeiture judicially. App. A5.

Petitioner made no effort to contest the seizure. However, the two other persons filed cost bonds. App. A5.

Petitioner was charged with conspiring to distribute methamphetamine and possession with intent to distribute methamphetamine. App. A2.

Petitioner submitted a motion to dismiss the indictment on grounds of double jeopardy. The government opposed the motion. On March 20, 1995, the District Court denied petitioner's motion to dismiss the indictment. App. A3.

Petitioner appealed the district court's order denying his motion to dismiss the indictment against him on double jeopardy grounds. On September 29, 1995, the Court of Appeals affirmed the district court's order. App. A1-A2. On April 5, 1996, the Court of Appeals denied petitioner's petition for rehearing and rejected petitioner's suggestion for rehearing en banc. App. A14-A15.

The basis for federal jurisdiction in the court of first instance was 18 U.S.C. § 3231.

ARGUMENT

The Court of Appeals stated in its memorandum as follows:

> [Petitioner] contends that the Double Jeopardy Clause prohibits his criminal

> prosecution, because jeopardy attached with the two uncontested administrative forfeitures of $12,256 seized upon his arrest in 1991 and the 1994 seizure of $20,644 in U.S. currency and $9,500 in traveler's checks found in his residence. [Petitioner]'s claim of double jeopardy arising from an administrative forfeiture is foreclosed by this court's recent decision in United States v. Cretacci, 94-10235, slip op. 9565, 9573 (9th Cir. Aug. 4, 1995).

App. A2.

In *United States v. Cretacci*, 62 F.3d 307, 310-311 (9th Cir. 1995), the Court of Appeals stated, in pertinent part, as follows:

> Cretacci contends that the forfeiture of the car constituted punishment because it was akin to a default judgment against him. We disagree and conclude instead that an administrative forfeiture of unclaimed property simply constitutes the taking of abandoned property. We hold that such a taking imposes no "punishment" for purposes of the Double Jeopardy Clause.
>
> By statute, the government has the authority, in some circumstances, to effect an administrative or "summary" forfeiture and thereby to avoid a judicial proceeding. *See United States v.*

$2,857.00, 754 F.2d 208, 211-12 (7th Cir.1985) (describing procedure); *United States v. One 1971 BMW 4-Door Sedan*, 652 F.2d 817, 819 (1981) (same). The administrative forfeiture procedures set forth in 19 U.S.C. §§ 1602-1618 apply to the type of forfeiture in question here. *See* 18 U.S.C. § 981(d).

Under the administrative forfeiture procedure, if the property is not claimed within a specified period of time, the agency that seized the property may declare it "forfeited" and sell it "in the same manner as merchandise *abandoned* to the United States[.]" 19 U.S.C. § 1609(a) (emphasis added). In light of the fact that the statute requires the government to notify potential owners of its intention to forfeit seized property, and the fact that, under the statute, if no claim of ownership is asserted, the government is permitted to sell the unclaimed property as if it had been "abandoned to the United States," we conclude that an owner who receives notice of the intended forfeiture and fails to claim an ownership interest in the property has effectively abandoned it.

Just as the seizure of abandoned property cannot be said to implicate the former owner's property rights, *see United States v. Huffhines*, 967 F.2d 314, 318 (9th Cir.1992); *United States v.*

> *Nordling*, 804 F.2d 1466, 1469 (9th Cir.1986), the forfeiture of abandoned property cannot be said to implicate the former owner's double jeopardy rights. In each instance, the government has acted against property that the owner has "renounce[d] utterly" and to which he has "relinquished all right, title, claim, and possession." *Black's Law Dictionary* 2-3 (5th Ed.1979) (defining the terms "abandon" and "abandoned property"). Thus, we conclude here that Cretacci abandoned the property and that its forfeiture did not serve to "punish" him.

The Court of Appeal's decisions in this case and in *Cretacci* are erroneous in two important respects. First, an administrative forfeiture of unclaimed property is akin to a default judgment under the plain language of 19 U.S.C. § 1609(b). Second, an owner who fails to claim an ownership interest in property has not effectively abandoned it.

Finally, in this case and *Cretacci*, the Court of Appeals decided a constitutional question of exceptional importance under the Double Jeopardy Clause that has not been, but should be, settled by this Court.

1. An administrative forfeiture of unclaimed property is akin to a default judgment under the plain language of 19 U.S.C. § 1609(b).

In *Cretacci*, the Court of Appeals overlooked

the plain language of 19 U.S.C. § 1609(b) when it disagreed with Cretacci's argument that the administrative forfeiture of his property "was akin to a default judgment against him."

19 U.S.C. § 1609(b) provides, in pertinent part, as follows:

> A declaration of forfeiture under this section [(i.e. an administrative forfeiture of unclaimed property)] shall have the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a district court of the United States.

The plain language of the statute requires that an administrative forfeiture of unclaimed property "shall have the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding."

The distinction between an administrative forfeiture of unclaimed property on the one hand, and a default judgment on the other hand, is a distinction without a difference. *See United States v. Amiel*, 889 F.Supp. 615, 621 (E.D.N.Y. 1995) ("Defendants in civil forfeiture actions can default by failing to file claims against the seized assets, ...or they can default by filing claims and then failing to pursue those claims.").

The effect of the forfeitures of petitioner's money is clear. The plain language of 19 U.S.C.

§ 1609(b) states than an administrative forfeiture "shall have the same force and effect" as a judicial forfeiture. *Cretacci* and this case were wrongly decided.

2. An owner who fails to claim an ownership interest in property has not effectively abandoned it.

In *Cretacci*, the Court of Appeals relied on 19 U.S.C. § 1609(a) to reach its conclusion that "an owner who receives notice of intended forfeiture and fails to claim an ownership interest in the property has effectively abandoned it." That reliance on 19 U.S.C. § 1609(a) is misplaced.

19 U.S.C. § 1609(a) provides, in pertinent part, as follows:

> If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the [property] forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold ....

In *Cretacci*, the Court of Appeals merged the "adjudication" clause of the statute ("If no such claim is filed or bond given ...the appropriate customs officer shall declare the [property] forfeited") with the "disposition" clause of the statute ("the appropriate customs officer ... shall sell the same ... in the same manner as

merchandise abandoned to the United States is sold") to reach a result that was not intended by Congress, and that is not supported by case law.

The Court of Appeals in *Cretacci* also relied on *United States v. Huffhines*, 967 F.2d 314 (9th Cir. 1992), and *United States v. Nordling*, 804 F.2d 1466, 1469 (9th Cir. 1986), which hold that the seizure of abandoned property does not implicate the former owner's privacy rights under the Fourth Amendment. Applying Fourth Amendment principles, the Court of Appeals then concluded that the forfeiture of abandoned property also cannot be said to implicate the former owner's Fifth Amendment double jeopardy rights. However, the court's reliance on *Huffhines* and *Nordling*, and its analogy to Fourth Amendment privacy interests, is flawed. The appropriate analogy to Fourth Amendment abandonment jurisprudence is that by failing to file a claim and cost bond, petitioner waived his Fifth Amendment due process right to contest the forfeiture. It cannot fairly be said that by failing to file a claim and cost bond, petitioner also gave up his double jeopardy right to not be subjected to multiple punishments for the same offense in separate proceedings.

In *Huffhines*, the defendant was arrested and a set of car keys were found on his person. During an interview at the police station, the defendant denied ownership or knowledge of the car. A search of the car led to the

discovery of incriminating evidence. The court held that since the defendant *disavowed* any connection to the car, he had abandoned it, and thus could not challenge the search. 967 F.2d at 318.

In *Nordling*, police officers asked the defendant to exit a commercial aircraft to answer some questions. The defendant was asked if he had left any luggage or carry-on baggage on the plane, to which he repeatedly responded that he had not. After the plane landed, the defendant's tote bag was seized and searched, and cocaine was found. The court held that defendant's *denial* of ownership, coupled with his physical relinquishment of the bag, by leaving it on the airplane, were inconsistent with a continued expectation of privacy and thus constituted an abandonment. 804 F.2d at 1469.

Significantly, before the government effected the searches and seizures in *Huffhines* and *Nordling*, the property had already been abandoned. In the case at bar, however, the government instituted the administrative forfeitures of petitioner's money *before* any abandonment could be said to have occurred. By seizing petitioner's property, the government was effectively able to force the action which the court construed as an abandonment.

Moreover, in *Huffhines*, the property was considered abandoned only after the property

owner disavowed any connection to it; similarly, in *Nordling*, the property was considered abandoned only after the property owner denied ownership of it and physically relinquished it. In *Cretacci* and this case, however, the Court of Appeals deemed the property abandoned merely because the property owners failed to contest the government's seizure and intended forfeiture of their property. Unlike an affirmative denial of ownership, or the leaving of property in a public place unattended, the failure to contest the forfeiture of seized property is not an affirmative act. For the reasons set forth below, a failure to act in such circumstances does not demonstrate sufficient intent of disassociation to constitute an abandonment.

The government must have probable cause at the time it institutes a forfeiture proceeding. 19 U.S.C. §1615; *United States v. $191,910.00 in U.S. Currency*, 16 F.3d 1051, 1065-71 (9th Cir. 1994). In this case, judges made findings of probable cause, and issued warrants to seize petitioner's currency, based upon findings that the currency represented the proceeds of manufacturing or distribution of controlled substances. Unless petitioner could overcome the government's showing of probable cause, the currency was going to be forfeited.

To contest the forfeiture, petitioner would have had to file claims of ownership and post cost bonds in a total sum in excess of $4,000 (10% of the value of the currency). Moreover,

in order to have any serious chance of prevailing, petitioner would have had to hire counsel or face the prospect of having to proceed against all of the government's resources *pro se*. *See, e.g., United States v. $292,888.04 in U.S. Currency*, 54 F.3d 31 (9th Cir. 1995) (no right to appointment of counsel in civil forfeiture proceeding). Yet, petitioner may not have had a defense to the forfeiture. Thus, it hardly seems surprising that petitioner decided not to contest the forfeitures.

> [A] rule which would require property owners to file a claim and go through the motions of contesting a civil forfeiture merely to preserve a double jeopardy issue has little to recommend it. Tens of thousands of uncontested forfeitures would soon find their way into court.

1 David B. Smith, *Prosecution and Defense of Forfeiture Cases*, 12.10 at 12-141 n. 33.1 (1995).

Besides imposing a tremendous and unnecessary burden on the court system, it makes little sense to require a property owner to contest a forfeiture which he or she does not wish to contest (especially where there may be no meritorious defense), merely to establish ownership of property (where, in most instances, the question of ownership is not an issue) in order to preserve the owner's constitutional protections against multiple punishments. This is especially true where, as

here, the government's forfeiture notice did not advise petitioner that even if he did not wish to contest the forfeiture, he was nevertheless required to file an assertion of ownership or waive his double jeopardy rights. Before the government can deprive an owner of such fundamental rights, it must comply with its constitutional duty to provide sufficient information to apprise the individual of the nature of the interests at stake so that the individual can make an informed, voluntary, and intelligent decision whether, and how, to protect those interests. *See* Smith, *supra*, at 9.03[2]; *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 795, 799-800, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983).

In sum, petitioner's failure to assert an ownership interest in the seized property simply did not demonstrate sufficient intent of disassociation to prove abandonment. There was no denial of ownership on petitioner's part, and he did not affirmatively try to disassociate himself from the seized property. He merely chose not to contest the forfeitures of seized property. Such an action, or, more properly, inaction, is not sufficient to constitute abandonment for purposes of double jeopardy analysis.

JAY W. FRANK
Attorney for Petitioner

JUNE 1996

NOT FOR PUBLICATION

FILED
SEP 29 1995
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	No. 95-50145
	)	
Plaintiff-Appellee,	)	D.C. No. CR-94-00816-H
v.	)	
	)	
GLENN DOUGLAS KNIGHT,	)	MEMO-RANDUM*
Defendant-Appellant.	)	

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted September 18, 1995**

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

Before: BROWNING, GOODWIN, and O'SCANNLAIN, Circuit Judges.

Glenn Douglas Knight appeals the district court's order denying his motion to dismiss the indictment against him on double jeopardy grounds. Knight was charged with conspiring to distribute methamphetamine and possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841 (a) (1) and 846.

Knight contends that the Double Jeopardy clause prohibits his criminal prosecution, because jeopardy attached with the two uncontested administrative forfeitures of $12,256 seized upon his arrest in 1991 and the 1994 seizure of $20,644 in U.S. currency and $9,500 in traveler's checks found in his residence. Knight's claim of double jeopardy arising from an administrative forfeiture is foreclosed by this court's recent decision in United States v. Cretacci, 94-10235, slip op. 9565, 9573 (9th Cir. Aug. 4, 1995). Accordingly, the district court's order is

AFFIRMED.

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MAR 20 1995
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY L Bancroft DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	) CASE NO. CR 94-816 H
Plaintiff,	)
	) **Order**
vs.	) **Denying**
	) **Defendant's**
GLENN DOUGLAS KNIGHT,	) **Motion to**
	) **Dismiss**
Defendant.	) **Indictment**
	) **on Double**
	) **Jeopardy**
	) **Grounds**

Defendant Gene Douglas Knight submitted a motion to dismiss the indictment on grounds of double jeopardy. The government opposes the motion. After reviewing the papers submitted by both parties, the court denies defendant's motion to dismiss the indictment.

BACKGROUND

The source of dispute in this case are two prior seizures of currency from defendant.

1. 1991 Administrative Forfeiture

On April 8, 1991, Oregon authorities discovered methamphetamine laboratory equipment in the defendant's car trunk. Knight was arrested but later released on April 9, 1991. Officers executed a search warrant for evidence of methamphetamine manufacturing at Knight's house. There, agents found a small quantity of marijuana, four hand guns and scales. Officers also discovered $ 12,256 in currency on defendant's person.

Although charges against Knight were dropped, the currency was seized for forfeiture under 21 U.S.C. § 881. Pursuant to 19 U.S.C. §§ 1602-1619, procedures to adminitratively forfeit the property were started. On May 28, 1991, two notices of seizure were sent to defendant's residence. Under the administrative forfeiture procedure, defendant could petition the government for the return of the property or his interest in it. In addition or in lieu of petitioning for remission or mitigation, defendant could also contest the forfeiture of the property in court.

According to defendant's motion papers, he did not contest the forfeiture: He neither submitted a petition for remission or mitigation within the thirty (30) day time limit nor did he file a claim of ownership, cost bond or declaration with the government. Accordingly, the forfeiture was completed and recorded as uncontested.

2. 1994 Seizure of Currency

In June 1994 pursuant to defendant's arrest in this case, agents seized $ 20,644 in currency and $ 9,500 in travelers checks. On August 1, 1994, notices of seizures were sent to Knight, his girlfriend, Carolyn Makarov, and her father, George Makarov. As with the 1991 seizure, these notices set forth the procedures for administrative remission and mitigation, as well as procedures for filing a cost bond and contesting the forfeiture judicially.

Knight made no effort to contest the seizure. However, both Carolyn and George Makarov filed cost bonds for the entire amount of the seized monies. Upon the filing of the cost bonds, neither the $ 20, 644 in currency nor the $ 9,500 in travelers checks were forfeited. Instead, the entire seizure was referred to the United States Attorney's office in Eugene,

Oregon on September 7, 1994. This was one day after the announcement of the decision in United States v. $ 405,089.23 Currency, et al., 33 F.3d 1210 (9th Cir. 1994).

Pursuant to the instructions of the $ 405,089.23 case, the United States did not file a civil action against the seized property. Instead the United States sought and received a superseding indictment naming the $ 20,644 in currency and the $ 9,500 in travelers checks in a criminal forfeiture count. The superseding indictment was returned on September 23, 1994.

DISCUSSION

Relying on the 1991 administrative forfeiture and the 1994 seizure, defendant argues that those two incidents bar the present criminal prosecution on double jeopardy grounds. Defendant also contends that a recent Ninth Circuit opinion regarding civil and criminal forfeitures, United States v. $ 405,089.23 Currency, et al., 33 F.3d 1210 (9th Cir. 1994), should be applied retroactively. The court considers each of defendant's arguments in turn.

A. Uncontested Administrative

Forfeitures

Double Jeopardy is a personal constitutional right. United States v. Halper, 490 U.S. 435, 447 (1989) ("This constitutional protection is intrinsically personal."); United States v. Rivera, 872 F.2d 507, 509 (1st Cir.), cert. denied, 493 U.S. 818 (1989) ("Double jeopardy is a personal right that can be waived.").

Defendant argues that the two prior forfeiture proceedings implicate his personal constitutional rights under United States v. $ 405,089.23 Currency, et al., 33 F.3d 1210 (9th Cir. 1994). As defendant notes in his papers, the issue of whether an uncontested administrative forfeiture proceeding implicates double jeopardy has not been addressed by the Ninth Circuit. However, the court finds the analysis of United States v. Torres, 28 F.3d 1463 (7th Cir. 1994), to be helpful. In Torres, the defendant contended that an uncontested administrative forfeiture proceeding affected his constitutional rights as protected by the Double Jeopardy Clause. Id. at 1465. Writing for the court, Judge Easterbrook found that where the defendant made no claim in an administrative forfeiture proceeding, he was not a party to the forfeiture. "As a non-party [defendant] was not at risk in the forfeiture

proceedings, and '[w]ithout risk of determination of guilt, jeopardy does not attach, and neither an appeal nor further prosecution constitutes double jeopardy.'" Id. (quoting Serfass v. United States, 420 U.S. 377, 391-92 (1975)). Because the defendant was not at risk in the forfeiture proceeding, the court found that jeopardy did not attach. Id.

Similarly in this case, Knight has not contested either forfeiture proceeding. In both instances, Knight received notices of the seizure with information on how to contest the seizures. However, Knight made no claim for the $ 12,256 in currency which was seized from him and thus the money was administratively forfeited to the government. In the 1994 action, although his girlfriend and her father contested the seizure of the $20,644 in currency and the $ 9,500 in travelers checks, Knight filed no claims contesting the seizure.

Having made no claims to the seized monies, Knight remained a non-party in these forfeiture actions and thus, no personal constitutional rights are implicated by continuing with these criminal proceedings. One may elect not to file a claim to property for any number of reasons. But by choosing not to contest the two forfeiture actions, Knight also

waived the opportunity to contest any issues of personal culpability. A person who avoids an adjudication of his guilt or innocence cannot later claim double jeopardy when the government seeks to obtain such an adjudication in a later proceeding. As the Supreme Court has observed, where a person "successfully avoid[s] such a[n] adjudication. . . [of] guilt or innocence," he has been "neither acquitted not convicted" for purposes of double jeopardy. United States v. Scott, 437 U.S. 82, 99 (1978); see also United States v. Vaughn, 715 F.2d 1373, 1376 (9th Cir. 1983) ("trial of the issue of guilt or innocence is the essence of double jeopardy").

Furthermore, as to the seized monies, because Knight did not make a claim in the forfeiture proceedings, the court has no reason to believe that he owned or had any interest in the money. If Knight did not have any interest in the money, its forfeiture did not impose any penalty on him. As such, "a non-'penalty' in a civil proceeding does not amount to 'jeopardy of life or limb' within the meaning of the fifth amendment." Torres, 28 F.3d at 1466.

Because Knight was a non-party to the prior administrative forfeiture proceedings, neither of which he contested, the court finds that

jeopardy does not attach in this case. Accordingly, court denies defendant's request to dismiss the indictment on double jeopardy grounds.

B. Retroactivity of United States v. $ 405, 089.23 Currency, et al.

Defendant also contends that $ 405,089.23 Currency should be applied retroactively to the 1991 administrative forfeiture and the 1994 seizure. Whether a court's decision applies retroactively is contingent upon a three-part test: (1) whether the case overrules past precedent, or decides an issue of first impression; (2) whether retroactivity would advance or hinder the new rule's application; and (3) the extent of any inequity that would result form retroactive application. Chevron Oil Co. v. Huson, 404 U.S. 97, 106-07 (1971).

As to the first prong, the court notes that United States v. $ 405,089.23 Currency, et al., 33 F.3d 1210 (9th Cir. 1994), represents a significant departure from past precedent. $ 405,089.23 Currency holds that dual proceedings, such as criminal prosecution and civil forfeiture, violate the Double Jeopardy clause. Id. at 1216. Prior to the holding in that case, the Ninth Circuit made clear that civil

forfeiture proceedings were remedial and concurrent forfeiture actions and criminal proceedings did not violate the Double Jeopardy Clause. United States v. McCaslin, 959 F.2d 786, 788 (9th Cir. 1992). Other circuits have also held that civil forfeiture proceedings do not constitute a separate "proceeding" for double jeopardy purposes. E.g., United States v. One Single Family Residence, 13 F.3d 1493, 1499 (11th Cir. 1994); United States v. Millan, 2 F.3d 17, 20 (2d Cir. 1993).

Second, the court finds that retroactive application would hinder the new rule's application. Applying $ 405,089.23 Currency retroactively would result in a deluge of new lawsuits in which plaintiffs, who have exhausted their criminal appeals, would seek to contest civil forfeitures in which they failed to file a claim. Thus, the court believes that retroactivity would be anomalous to the intent of the Ninth Circuit in issuing its opinion.

Third and finally, the court holds that retroactive application would produce substantial inequitable results. Retroactive application would mean that concurrent forfeiture and criminal proceedings which the government prosecuted in good faith would be subject to attack. Moreover, most of the assets

which were forfeited in prior cases have long since been disposed of by the United States government.

For the reasons delineated, the court finds that retroactive application of $ 405,089.23 Currency inappropriate and inconsistent with the Supreme Court's holding in Chevron Oil Co. v. Huson, 404 U.S. 97 (1971).

CONCLUSION

Having reviewed the papers submitted by both parties, the court finds that the two uncontested adminitrative forfeitures at issue here did not implicate defendant Knight's personal constitutional rights as protected by the Double Jeopardy clause. Furthermore, the court finds that retroactive application of United States v. $ 405,089.23 Currency et al., 33 F.3d 1210 (9th Cir. 1994), to be inappropriate. Accordingly, the court denies defendant's motion to dismiss the indictment against him.

IT IS SO ORDERED.

DATED: 3/20/95

/s/ Marilyn L. Huff

MARILYN L. HUFF,
JUDGE
UNITED STATES
DISTRICT COURT

FILED
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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA	)	No. 95-50145
	)	
Plaintiff-Appellee,	)	D.C. No. CR-94-00816-H
v.	)	Southern California
GLENN DOUGLAS KNIGHT,	)	(San Diego)
	)	
Defendant-Appellant.	)	ORDER

Before: BROWNING, GOODWIN, and O'SCANNLAIN, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

§ 1609. Seizure; summary forfeiture and sale

(a) In general

If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise dispose of the same according to law, and shall deposit the proceeds of sale, after deducting the expenses described in section 1613 of this title, into the Customs Forfeiture Fund.

(b) Effect

A declaration of forfeiture under this section shall have the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a district court of the United States. Title shall be deemed to vest in the United States free and clear of any liens or encumbrances (except for first preferred ship mortgages pursuant to section 961 of Title 46, Appendix or any corresponding revision, consolidation, and enactment of such subsection

in Title 46) from the date of the act for which the forfeiture was incurred. Officials of the various States, insular possessions, territories, and commonwealths of the United States shall, upon application of the appropriate customs officer accompanied by a certified copy of the declaration of forfeiture, remove any recorded liens or encumbrances which apply to such property and issue or reissue the necessary certificates of title, registration certificates, or similar documents to the United States or to any transferee of the United States.